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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,648	03/15/2002	William A. Elmer	8588.12RE	7382

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06/12/2003

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EXAMINER

GREEN, BRIAN

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/098,648

Applicant(s)

ELMER, WILLIAM A.

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A ~~SHORTENED STATUTORY~~ PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- ~~Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.~~
- ~~If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.~~
- ~~If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.~~
- ~~Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).~~
- ~~Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).~~

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Reissue Applications

While there is a stay of the concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed or suspended because a stay of that litigation is in effect for the purpose of awaiting the outcome of these reissue proceedings. Due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

Claims 1-18 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

The amendment filed 5/6/03 with this application fails to accurately explain where in the disclosure of the patent there is support for the changes made in the claims. Column 2, line 57 to column 3, line 9 and figures 1A and 3 fail to provide adequate support for new claims 7-18. See 37 CFR 1.173 (C).

The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Drawings

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The drawings are objected to because the figures fail to show numeral "114" as mentioned in column 2, lines 60 and 61. In figure 3, the lead line for numeral "180" is directed to the hood instead of the roof as defined in column 3, lines 34-35. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to state that the sign includes receptacles/receptacle means as defined in claims 1,4,7-11, and 13-16, the specification uses the word "recess". The specification fails to state that the base, ends and sides are "formed together" as defined in claim 2. The specification fails to state that the housing is made from a "non-metallic" material as defined in claim 4. The specification fails to state that the housing is dish-shaped as defined in claims 4 and 12. The specification fails to state that the receptacles surround all of the magnets as defined in claims 7,13, and 16. The specification fails to state that the receptacles extend below the base as defined in claim 9 and also does not disclose that the receptacle extend below an adjacent side and an adjacent end as defined in claims 10 and 11. The specification fails to state that a plastic coating extends over the edge of each dish-shaped housing as defined in claim 12 and that magnet receptacle means extend below and around the base and surrounding all of the magnets as defined in claim 13. The specification fails to state that the receptacle means extend below an adjacent side as defined in claim 14 and also does not disclose that the receptacle means extend below an adjacent end as defined in claim 15. The specification fails to state that the magnet receptacle means comprise plural magnet receptacles each surrounding at least one of the magnets as defined in claim 16. The specification fails to state that the plastic coating extends below a bottom surface of the magnet as defined in claim 17. The specification fails to state that the supporting means includes at least one magnet as defined in claim 18.

The disclosure is objected to because of the following informalities: in the specification, column 3, line 11 indicates that the numeral 134 is directed to a metal housing but in column 4, lines 39-40 indicate

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that numeral 134 is directed to a scratch resistant coating. The applicant needs to indicate what single element numeral 134 is directed to and add an additional numeral for the other element.

Appropriate correction is required.

Claim Objections

Claim 5 is objected to because of the following informalities: In claim 5, line 1, "sign" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Stating in claim 18 that the supporting means includes at least one magnet is considered to be new matter. The specification as originally filed states that the sign is supported on an elongated bar of a "ferrous metal". "Ferrous metal" is not necessarily a magnet.

Claims 4-6,9-11, and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 12, "a non-metallic, dish-shaped housing" is indefinite since the applicant discloses in the specification that the housing is metallic. In claim 4, lines 15-19 and claim 5, lines 2-5 are indefinite since it is not clear which elements make up the fastening means and which elements make up the pivotal means, i.e. it appears that the screw (128) is part of the fastening means and part of the pivotal means. Claim 9 is indefinite since it is not understood how the receptacles can extend below the base in view of the fact that the receptacles forms part of the base. Claim 10 is indefinite since the receptacle does not appear to extend below an adjacent side since part of the receptacle forms part of the side, see figure 1. Claim 11 is indefinite since the receptacle does not appear to extend below an adjacent end since part of the receptacle forms part of the end, see figure 1. Claim 13 is indefinite since it is not

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understood how the receptacle means can extend below the base in view of the fact that the receptacle means forms part of the base and how the receptacle means can extend "around" the base. Claim 14 is indefinite since the receptacle means does not appear to extend below an adjacent side since part of the receptacle means forms part of the side, see figure 1. Claim 15 is indefinite since the receptacle means does not appear to extend below an adjacent end since part of the receptacle means forms part of the end, see figure 1.

Regarding claims 13-16, the word "means" is preceded by the word(s) "magnet receptacle" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. § 103 as being unpatentable over by European Patent No. 415,194 in view of George (U.S. Patent No. 4,052,806).

European Patent No. '194 shows in figures 1-6 an advertising sign comprising an advertising member (1) having a base (3, 114), plural magnets (112), and means (115,116,117) for pivotally attaching each magnet to the base wherein the pivotal means includes a flexible sleeve (115). European Patent No. '194 shows a fastener that extends through the magnet, flexible sleeve and into the base, see fig. 6. European Patent No. '194 does not disclose forming the advertising member with ends and sides.

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George shows in figures 1-4 an illuminated sign that is secured to the roof of a vehicle that comprises a base, ends, and sides. In view of the teachings of George it would have been obvious to one in the art to modify European Patent No. '194 by forming it in the shape taught by George since this is just one of a wide range of conventional shapes that the sign could be formed into in order to create an aesthetically pleasing display.

Claims 1,4-11, and 13-17 are rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George as applied to claims 2 and 3 above, and further in view of Podoloff (U.S. Patent No. 3,245,165) and Wagner (U.S. Patent No. 2,960,786).

In regard to claims 1,4-11, and 13-16, European Patent No. 415,194 in view of George disclose the applicant's basic inventive concept except for placing the magnet within a housing and attaching receptacles on the base for receiving the magnet and housing. European Patent No. 415,194 discloses in column 4, lines 25-40 the idea of fixing the magnets to the base without the use of the rails. Podoloff shows in figures 1-5 a sign secured to a vehicle comprising a disc-shaped housing (14) with a magnetic member (12) placed therein. Podoloff also shows that the housing (14) extends below the magnetic member (12). In view of the teachings of Podoloff it would have been obvious to one in the art to modify European Patent No. 415,194 by placing the magnet member in a disc-shaped housing since the housing would help prevent scratching of a metal panel to which the advertising sign is attached. Wagner shows in figures 1-4 a sign that includes molded receptacles/feet (27,28,29) on the base and which receive magnets (21) therein. In view of the teachings of Wagner it would have been obvious to one in the art to modify European Patent No. 415,194 by replacing the rails with molded receptacles/feet since this would allow the sign and rails to be made in a single step which would help to reduce the time necessary to assemble the sign. In regard to claims 7,8, and 16, the housing of Podoloff surrounds the magnets, see figures 2-5. In regard to claims 9-11 and 13-15, the receptacles of Wagner extend below the base, sides, and ends. In regard to claim 17, Podoloff shows in figures 2-5 that there is a flexible layer (36) extending below each magnet. Podoloff does not disclose making the layer from a plastic material. It is considered

within one skilled in the art to make the layer out of a plastic material since this would allow the layer to be made in an easier and less expensive manner.

Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George, Podoloff (U.S. Patent No. 3,245,165) and Wagner (U.S. Patent No. 2,960,786 as applied to claim 1 above, and further in view of "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B).

EP '194 in view of George, Podoloff, and Wagner disclose the applicant's basic inventive concept except for providing a magnetic attaching means for the sign. "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) shows the use of a magnetic holder for supporting tools, parts, bolts, etc. In view of the teachings of "Magnetic Bases" it would have been obvious to one in the art to modify EP '194 by providing a magnetic attaching means since this would allow the signs to be stored in a better and more convenient manner.

Claims 1 and 4-17 are rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George as applied to claims 2 and 3 above, and further in view of by Auto Angle ("Photograph or Auto Angle with magnets" and "Pizza Today" plastic auto angle) as disclosed in the Tracy Cassel declaration, paragraphs 6-12 and Wagner (U.S. Patent No. 2,960,786).

In regard to claims 1 and 4-16, European Patent No. 415,194 in view of George disclose the applicant's basic inventive concept except for placing the magnet within a housing and attaching receptacles on the base for receiving the magnet and housing. Auto Angle is described as an advertising member which is formed in a triangular shape and including a base, plural magnets (RB-80 magnets), a magnet secured within a housing in which the housing extends past the magnet placed within the housing, a picture of the RB-80 magnet assembly is shown in Exhibit B of the John Nellessen

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declaration), and means (fastener used to fix the magnet and rubber hose or rubber washer to the base) for pivotally attaching each magnet to the base wherein the pivotal means includes a flexible sleeve (rubber hose or rubber washer). In view of the teachings of Auto Angle it would have been obvious to one in the art to modify European Patent No. 415,194 by placing the magnet member in a disc-shaped housing since the housing would help to protect the magnet from damage, would allow the magnet to be attached to the sign in an easier manner, and the plastic coating would help prevent the housing from scratching the surface upon which it is attached. Wagner shows in figures 1-4 a sign that includes molded receptacles/feet (27,28,29) on the base and which receive magnets (21) therein. In view of the teachings of Wagner it would have been obvious to one in the art to modify European Patent No. 415,194 by replacing the rails with molded receptacles/feet since this would allow the sign and rails to be made in a single step which would help to reduce the time necessary to assemble the sign. In regard to claims 7,8, and 16, the housing of Auto Angle surrounds the magnets. In regard to claims 9-11 and 13-15, the receptacles of Wagner extend below the base, sides, and ends. In regard to claims 12 and 17, the Auto Angle includes a plastic coating that extends around the housing and this coating would extend below each magnet.

Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George, Auto Angle ("Photograph of Auto Angle with magnets" and "Pizza Today" plastic auto angle) as disclosed in the Tracy Cassel declaration, paragraphs 6-12 and Wagner U.S. Patent No. 2,960,786 as applied to claim 1 above, and further in view of "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B).

EP '194 in view of George, Auto Angle as disclosed in the Tracy Cassel declaration, paragraphs 6-12 and Wagner disclose the applicant's basic inventive concept except for providing a magnetic attaching means for the sign. "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) shows the use of a magnetic holder for supporting tools, parts, bolts, etc. In view of the teachings of "Magnetic Bases" it would have been obvious to one in the art to modify EP '194 by providing a magnetic attaching means since this would allow the signs to be stored in a better and more convenient manner.

Claims 1,4-11,13-16,and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George as applied to claims 2 and 3 above, and further in view of "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) and Wagner (U.S. Patent No. 2,960,786).

European Patent No. 415,194 in view of George disclose the applicant's basic inventive concept except for placing the magnet within a housing and attaching receptacles on the base for receiving the magnet and housing. John Nellessen discloses that that the RB-80 magnetic assembly includes a magnet secured within a housing in which the housing extends past the magnet (see Exhibit B of the John Nellessen declaration) has been used since around 1982. In view of the teachings of "Magnetic Bases" it would have been obvious to one in the art to modify European Patent No. 415,194 by placing the magnet member in a disc-shaped housing since the housing would help to protect the magnet from damage and would allow the magnet to be attached to the sign in an easier manner. Wagner shows in figures 1-4 a sign that includes molded receptacles/feet (27,28,29) on the base and which receive magnets (21) therein. In view of the teachings of Wagner it would have been obvious to one in the art to modify European Patent No. 415,194 by replacing the rails with molded receptacles/feet since this would allow the sign and rails to be made in a single step which would help to reduce the time necessary to assemble the sign. In regard to claims 7,8,and 16, the housing of "Magnetic Bases" surrounds the magnets. In regard to claims 9-11 and 13-15, the receptacles of Wagner extends below the base, sides, and ends. It is considered within one skilled in the art to make the layer out of a plastic material since this would allow the layer to be made in an easier and less expensive manner. In regard to claim 18, "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) shows the use of a magnetic holder for supporting tools, parts, bolts, etc. In view of the teachings of "Magnetic Bases" it would have been obvious to one in the art to modify EP '194 by providing a magnetic attaching means since this would allow the signs to be stored in a better and more convenient manner.

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Claim 12 is rejected under 35 U.S.C. § 103 as being unpatentable over European Patent No. 415,194 in view of George and "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) and Wagner (U.S. Patent No. 2,960,786) as applied in claim 1 above and further in view of Podoloff (U.S. Patent No. 3,245,165).

European Patent No. 415,194 in view of George, "Magnetic Bases", and Wagner disclose the applicant's basic inventive concept except for placing a plastic coating over the housing. Podoloff shows in figures 2-5 the idea of placing a rubber coating (36) over the edge of a housing. In view of the teachings of Podoloff it would have been obvious to one in the art to modify European Patent No. '194 by attaching a layer over the housing since this would help to protect the surface upon which the sign is attached from damage, i.e. scratching. It is considered within one skilled in the art to make the layer out of a plastic material since this would allow the layer to be made in an easier and less expensive manner.

Claims 2,3, and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over by Auto Angle ("Photograph of Auto Angle with magnets" and "Pizza Today" plastic auto angle) as disclosed in the Tracy Cassel declaration, paragraphs 6-12 in view of George (U.S. Patent No. 4,052,806).

Auto Angle is described as an advertising member which is formed in a triangular shape and including a base, plural magnets (RB-80 magnets), and means (fastener used to fix the magnet and rubber hose or rubber washer to the base) for pivotally attaching each magnet to the base wherein the pivotal means includes a flexible sleeve (rubber hose or rubber washer). In regard to claim 17, Auto Angle discloses in paragraph 11 the idea of placing a plastic coating over the magnet. Auto Angle does not disclose forming the advertising member with ends and sides, i.e. the Auto Angle device is triangular so it does not include two side and two ends it would only include two sides and one end. George shows in figures 1-4 an illuminated sign that is secured to the roof of a vehicle that comprises a base, ends, and sides. In view of the teachings of George it would have been obvious to one in the art to modify Auto Angle by forming it in the shape taught by George since this would allow more information to be displayed by the sign and would allow the information to be viewed from more directions.

Claims 1 and 4-17 are rejected under 35 U.S.C. § 103 as being unpatentable over Auto Angle ("Photograph of Auto Angle with magnets" and "Pizza Today" plastic auto angle) as disclosed in the Tracy Cassel declaration, paragraphs 6-12 in view of George as applied to claims 2 and 3 above, and further in view of Wagner (U.S. Patent No. 2,960,786).

Auto Angle in view of George disclose the applicant's basic inventive concept except for attaching receptacles on the base for receiving the magnet and housing. Wagner shows in figures 1-4 a sign that includes molded receptacles/feet (27,28,29) on the base and which receive magnets (21) therein. In view of the teachings of Wagner it would have been obvious to one in the art to modify Auto Angle by placing the magnet and housing within the receptacle/feet since this would help to protect the magnet from damage and would create a more aesthetically pleasing display. In regard to claims 9-11 and 13-15, the receptacles of Wagner extend below the base, sides, and ends.

Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over Auto Angle as disclosed in the Tracy Cassel declaration, paragraphs 6-12 in view of George and Wagner (U.S. Patent No. 2,960,786) as applied to claim 1 above, and further in view of "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B).

Auto Angle as disclosed in the Tracy Cassel declaration, paragraphs 6-12 in view of George and Wagner disclose the applicant's basic inventive concept except for providing a magnetic attaching means for the sign. "Magnetic Bases" as disclosed in the declaration of John Nellessen (Exhibit B) shows the use of a magnetic holder for supporting tools, parts, bolts, etc. In view of the teachings of "Magnetic Bases" it would have been obvious to one in the art to modify Auto Angle by providing a magnetic attaching means since this would allow the signs to be stored in a better and more convenient manner.

Response to Arguments

The protester indicates that all of the references discussed in the declarations have been listed on a form and instructs the examiner to consider the references and to make them of record. The protest did

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not include a list of the references cited by the protester. All of the references have been considered by the examiner but only those listed on form PTO-892 by the examiner have been made of record.

The protester argues that the applicant fails to indentify the basis for the reissue, i.e. no specification or drawing defect is indentified or offered to be corrected. The applicant defined in the declaration that "The original patent claims less than the patentee had a right to claim" which is acceptable language, see MPEP 1414.

The protester argues that the applicant does not surrender over-braod claims and improperly attempts to obtain new over-broad claims. Whether the original claims and new claims are over-broad has to be détermined on the prior art of record and since the new claims do not include any recaptured subject matter the applicant is entitled to add them in this reissue application.

The protester argues that the 131 Affidavit submitted by the applicant to swear behind the date of Canadian Patent No. 2,041,396 contained no drawings or other objective indication that the applicant had reduced its invention to practice prior to the effective prior art date of the Canadian Patent. The Board of Appeals (decision mailed July 29, 1996) indicated that the information submitted in the 131 Affidavit by the applicant was sufficient.

The protester argues that the claims in the patent and reissue application are not allowable in view of the prior art disclosed in the Declaration of James W. Caulk. The examiner has considered the information disclosed in the Declaration of James W. Caulk and the cited prior art including the RB-80 magnet assembly. The prior art RB-80 magnet assembly has been used in some of the art rejections made by the examiner in rejecting some of the claims in the reissue application.

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The protester argues that the claims in the patent and reissue application are not allowable in view of the prior art disclosed in the Declaration of Albert F. Roma. The examiner has considered the information disclosed in the Declaration of Albert F. Roma and the cited prior art.

The protester argues that the claims in the patent and reissue application are not allowable in view of the prior art disclosed in the Declaration of Paul Berg. The examiner has considered the information disclosed in the Declaration of Paul Bergames W. Caulk and the cited prior art including the Magnetic Roof Rider and RB-80 magnet assembly. The prior art RB-80 magnet assembly has been used in some of the art rejections made by the examiner in rejecting some of the claims in the reissue application.

The protester argues that the claims in the patent and reissue application are not allowable in view of the prior art disclosed in the Declaration of John Nellessen. The examiner has considered the information disclosed in the Declaration of John Nellessen and the cited prior art including the RB-80 magnet assembly. The prior art RB-80 magnet assembly has been used in some of the art rejections made by the examiner in rejecting some of the claims in the reissue application.

The protester argues that the claims in the patent and reissue application are not allowable in view of the prior art disclosed in the Declaration of Tracy Cassel. The examiner has considered the information disclosed in the Declaration of Tracy Cassel and the cited prior art including the Auto Angle and RB-80 magnet assembly. The prior art Auto Angle and RB-80 magnet assembly has been used in some of the art rejections made by the examiner in rejecting some of the claims in the reissue application.

The protester argues that there is no antecedent basis for the word "receptacle", "surround", "plastic material on the edge", "formed together", in the application. The examiner agrees and has objected to the specification because of the lack of antecedent basis in the specification.

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The protester argues that in claim 4 the applicant claims a "non-metallic" housing but discloses in the specification that the housing is metallic. The examiner agrees and has made a 112 second paragraph rejection with regard to this error in claim 4.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Camp et al. (U.S. Patent No. 2,875,324) discloses the use of a device that includes pivotally attached magnets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.


BRIAN K. GREEN
PRIMARY EXAMINER

bkg
June 9, 2003